

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
CUM LABOUR COURT DELHI1
ROOM No.207 ROUSE AVENUE, DISTRICT COURT
COMPLEX, NEW DELHI-110002**

Present: Justice Vikas Kunvar Srivastav (Retd.)
Presiding Officer,
CGIT-cum-Labour Court Delhi-1.

**Misc. Application (in Appeal No. D-1/03/2023)
under Rule 7(2) of EPFAT(Procedure) Rules,
1997, r/w Section 5 and 29 of the Limitation
Act, 1961, filed on behalf of the Appellant,
seeking condonation of delay in filing the
appeal**

M/s. YPA Hospitality Private Ltd. Appellant

Vs.

RPFC, Delhi (S)

Respondent

Order:- 22.02.2023

Through Counsels:-

1. Sh. Nikhil Patnaik & Sh. Kunal Arora,
for the Appellant

2. Sh.Manu Parashar, for the Respondent

1. The present application is filed on behalf of the Appellant seeking condonation of delay in filing the appeal against an order passed by the Respondent under section 7A of the 'Employees' Provident Funds & Miscellaneous Provisions Act, 1952' (which shall hereinafter be referred for brevity and convenience as "the Act" only).

2. The Appellant by his application has submitted that the Respondent by way of an order dated 22.03.2019 passed u/s 7 A of "the Act" proceeded to assess an amount of Rs. 56,91,002/- as dues to be paid by the Appellant towards P.F. Contributions for the period 01/2012 to 03/2016 and the same was communicated to the Appellant on 09.12.2022.

3. Further citing the circumstances which lead to the knowledge of the impugned order, the Appellant submitted that the Appellant / Applicant came to know about recovery proceeding initiated by the department after receiving an email dated 11.11.2022 sent to the A/R of the

Appellant / Applicant enclosing a Show cause notice addressed to Sh.Amit Bagga (Director) of the Appellant establishment and directing him to appear before the Recovery Officer on 23.11.2022.

4. The Appellant / Applicant further states that although the A/R of the Appellant appeared before the Recovery Officer on 23.11.2022, the proceedings of the same date incorrectly showed that none had appeared on behalf of the Appellant and no submissions of the Appellant were recorded in the proceedings dated 23.11.2022. Accordingly, the Appellant vide his email dated 27.11.2022 requested the Recovery officer to mark his presence in the proceedings dated 23.11.2022.

5. The Appellant/ Applicant again appeared before the Recovery officer 01.12.2022 but no proceeding was conducted on that day due to the Recovery Officer being on leave. Therefore, the Appellant / Applicant submitted an request letter dated 30.11.2022 asking to supply him a copy of the impugned order and also granting him time of

four weeks to submit a comprehensive reply to the Show Cause Notice.

6. The Appellant / Applicant was supplied the copy of the Impugned order dated 22.03.2019 during the proceedings before the Recovery officer on 09.12.2022 and the same was recorded in the order sheet which is reproduced herewith for ready reference:-

ORDER SHEET

Dated-

09.12.2022

"Sh. Kunal Arora, Esst. Representative appeared on behalf of the establishment without original authority letter Sh. Kunal Arora Sought six-week time to trace out the old records and submit proper reply in the matter. The request of the establishment representative is acceded to and granted three weeks' time only. Further the establishment vide letter dated- 30.11.2022, has sought copy of order on the basis of which the Recovery Certificate has been issued. Accordingly, a copy of 7A order dated 28.02.2019 is supplied to Shri Kunal Arora

Establishment Representative must submit the original authority letter by next date of hearing

Matter is adjourned to 29.12.2022."

Sd-

7. Relying upon the judgement passed by Hon'ble Delhi High Court In W.P.(C) No.

17004/2022 titled “CVC Opticals OPC Pvt. Ltd Vs. Union Of India & Anr.” the Ld. Counsel for the Appellant / Applicant submitted that the date of receipt of the order be considered as starting point of the limitation period and the present appeal which is filed with this Tribunal on 06.01.2023 is filed within time.

8. Further reliance is made on the judgement passed by Hon’ble Delhi High Court on 04.12.2020 in W.P.(C) No. 9530/2020 titled “Civicon Eng. Contracting India Pvt. Ltd. Vs. CBT & Ors.” and pleaded that the limitation and right to avail of legal remedies will run from the date when the orders are supplied to the Petitioner and also relied upon the judgement passed by Hon’ble Allahabad High Court in the matter of “National Winder Vs. P.O. EPFAT & Ors.”

9. The Ld. Counsel for the Respondent in his rebuttal submitted that the Appellant / Applicant were having the knowledge of the order, since the same was handed over to the A/R of the

establishment on 29.08.2019 and submitted a letter addressed to the RPFC, Dwarka (the Respondent), however, he also submitted that he has no instructions regarding the communication of orders through web-uploading of the orders. The Respondent was given a chance to place the letter on record through filing an affidavit till 18.01.2023, but the same is not done.

10. Subsequent thereto an affidavit duly signed by Assistant P.F. Commissioner of the Respondent is presented in the office on 17.02.2023 which was kept on record. While disposing the application on merit, the said document, the acknowledgment letter of receiving the copy of the order dated 22.03.2019 on 29.08.2019 is available for consideration.

11. The right to move an appeal available to the Appellant as well as right available to a Respondent in respect of the valuable right of defense should not be discarded for any technical reason. The letter of Appellant acknowledging the

receipt of copy of impugned order is a valuable defense available to the Respondent, argued before the court by the Ld. Counsel for the Respondent in the presence and attendance of the Ld. Counsel for the Appellant but the same for the reason of not supported with affidavit was subjected to the subsequent filing of the affidavit though within a prescribed time limit by the court. The Appellant in view of the order dated 17.01.2023 has also rebutted the production of letter of acknowledgement before the Court by the Respondent vide his email application dated 18.01.2023. The affidavit of respondent in support of the said letter of acknowledgment by Appellant's letter dated 29.08.2019 is now on record , therefore, it would not be just and proper to discard the same in consideration over the Appellant's application for condonation of delay.

12. Heard the Ld. Counsels for the respective parties to the appeal and perused the materials placed on record by them. The perusal of the impugned order reveals that the same is passed

on merit and not ex parte by the authorized officer of the Respondent.

13. Admittedly the Appellant establishment “ YPA Hospitality Pvt. Ltd.” Covered under Section 1(3) (b) of “the Act” w.e.f 01.01.2012 under the schedule head ‘Restaurant’ and was allotted P.F. Code with regard to it’s employees vide coverage notice dated 29.10.2014. A show cause notice to the establishment was issued on 12.06.2015 for the period 01/2012 to 08/2015. The impugned order reveals that when the said notice remained unreplyed , enquiry under Section 7 A of “the Act” was initiated and summons was issued fixing 31.10.2015 as date of hearing. On 05.12.2016, ‘Sh. Ravi Kumar’ appeared on behalf of the appellant establishment as representative, who was directed to furnish the required records for the enquiry period before the notified inspector, the D.R. fixing 22.03.2016. No requisite records in the enquiry were furnished by the establishment representative who sought repeatedly time on 22.02.2016 and 13.06.2016, therefore, hearing

was adjourned imposing cost on the Appellant establishment. On 20.07.2016, fresh summons were issued against the establishment covering extended period upto 03/2016 also in the current enquiry and for hearing and production of records, the date fixed was 22.08.2016. Again, hearing dated 22.08.2016 was adjourned as required records were not furnished imposing cost on hearing dated 15.09.2016. Establishment representative Sh. Vipin Bansal appeared. Both the establishment representative produced the requisite records in piecemeals which were taken on record for verification by the concerned department representative. The Director of the Appellant establishment was ordered to appear in person on the next date but he did not appear, consequently, the hearing was adjourned fixing 26.09.2016 on cost imposed on the establishment. Ultimately the Respondent wrote a letter to the Banker of the Appellant establishment to freeze the Bank Account and to furnish a Demand Draft in favour of the RPFC, Delhi (South) for amount of

cost imposed on different dates of hearing and again the hearing was adjourned on the behest of the establishment fixing another date.

14. In para 6 of the impugned order, the enquiry officer recorded his observation as under which would be relevant for the purpose of ascertaining the conduct of the Appellant in participation and in compliance of the order passed in presence of their representative to co-operate with the enquiry:-

6. On hearing dated 03.10.2018, Sh. Jaspal Singh Teja, Director appeared in person and promised to represent the case but neither he himself nor any of the representative appeared on behalf of the establishment, even after lapse of more than 03 years, issuing notice u/s 30 of CPC to the Director(s) of the establishment on 05.01.2016, 20.01.2016, 26.02.2016, 02.09.2016, 05.10.2016, 16.02.2018 & 23.10.2018

and imposing cost of Rs.27500/-on different dates, issuing bailable warrant against the Director(s) of the establishment on 16.07.2018, 31.07.2018, 24.08.2018, 06.09.2018 & 28.09.2018. Despite of assurance given by the Director(s) of the establishment to co-operate in production of requisite records/information in order to get the inquiry concluded, the establishment never co-operated in producing the records for the period of inquiry. Hence, despite opportunities being given to the establishment on last several dates, the establishment failed to produce the records as required resulting in unwarranted delay in conclusion of the inquiry. Since there being no possibility of the establishment to produce the complete records for the period of inquiry, on proceedings dated 28.12.2018, DR was directed to submit her final report

on the basis of the available records to conclude the inquiry and the case was adjourned to 29.01.2019.

15. Ultimately, the impugned order was passed in conclusion of the enquiry under Section 7A of “the Act” in the event of not following the undertaking to appear and provide the other record, if any, given by the Director Sh. Jaspal Singh Teja.

16. The impugned order dated 22.03.2019 was received by the establishment representative. The letter of establishment’s representative acknowledging the receipt of the order with other document is on record of the case before the Tribunal. The date of receiving of the order is endorsed on the said letter is 29.08.2019. Once the order is served personally to the said representative, no other mode of service of order concurrently required necessary to the Appellant.

17. The Applicant heavily relied on the verdict of Hon’ble Delhi High Court in the case of W.P.(C) 9530/2020 titled as Civicon Engineering

Contracting India Pvt. Ltd. And Ors. Vs. The Central Board of Trustees and Ors. Considering the special and peculiar circumstances of the case, the Hon'ble Delhi High Court had issued directions vide it's judgement dated 04.12.2020. Para 7 of the judgement is quoted hereunder with due regard:-

7. Almost all courts and tribunals across the country make their orders and proceeding sheets available online. The necessity for the same, especially during the COVID-19 pandemic needs no emphasis. It is part of good governance of all institutions, especially authorities and bodies performing public functions to provide services to the maximum extent possible by integrating technology in their everyday working. The EPFO need not be an exception. A perusal of the EPFO's website shows that there are more than 6.6 lakh establishments registered with the EPFO. An online

search also reveals that on the website www.eproceedings.epfindia.gov.in, in the window relating to daily orders, not a single order dated 3rd June 2019 is uploaded. Thus, there appears to be a clear lapse by the authorities.

18. In the aforesaid factual context, it would be relevant to reproduce hereunder the provisions relating to the right of appeal against the order passed under Section 7 A of “the Act” in Section 7 I and corresponding Rule 7(2) of the Tribunal (Procedure) Rules, 1997.

19. The impugned order passed under section 7A is made appealable in “the Act” under Section 7I which is quoted hereunder for easy reference: -

*7-I. Appeals to Tribunal.—(1) Any person aggrieved by a notification issued by the Central Government, or an order passed by the Central Government or **any authority,** under the proviso to sub-section (3), or sub-section (4), of*

*section 1, or section 3, **or sub-section (1) of section 7A**, or section 7B [except an order rejecting an application for review referred to in sub-section (5) thereof], or section 7C, or section 14B, **may prefer an appeal to a Tribunal against such notification or order.** (2) Every appeal under sub-section (1) shall be filed in such form and manner, within such time and be accompanied by such fees, as may be prescribed.*

20. The Sub Section 2 of the Section 7 I provides that such appeal under sub Section 1 shall be filed in such form and manner within such time and be accompanied by such fees as may be prescribed. Here Rules framed for the purpose of the Appellate tribunal to exercise powers under Section 7 I are important. The Tribunal (Procedure) Rules, 1997, in it's Rule 7 provides as under: -

7. Fee, time for filing appeal, deposit of amount due on filing appeal.— (1)

Every appeal filed with the Registrar shall be accompanied by a fee of Rupees Two Thousand to be remitted in the form of Crossed Demand Draft on a nationalized bank in favour of the Registrar of the Tribunal and payable at the main branch of that Bank at the station where the seat of the said Tribunal situate.

*(2) **Any person aggrieved** by a notification issued by the Central Government or **an order passed by** the Central Government or any other **authority under the Act, may within 60 days from the date of issue of the notification/order, prefer an appeal to the Tribunal.***

Provided that the Tribunal may if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the

prescribed period, extend the said period by a further period of 60 days.

Provided further that no appeal by the employer shall be entertained by the Tribunal unless he has deposited with the Tribunal a Demand Draft payable in the Fund and bearing 75% of the amount due from him as determined under Section 7-A. Provided also that the Tribunal may for reasons to be recorded in writing, waive or reduce the amount to be deposited under Section 7-O.

21. Sub-Rule (2) of Rule 7 specifically provides that the appeal under Section 7 I may be filed within 60 days from the date of issue of the notification / order before the Tribunal. This would be noteworthy that whatever the date of the order may be, the relevant date for preferring an appeal by the aggrieved person is the “date of issue of the order”. The proviso appended with that sub rule provides that the tribunal may, if it is satisfied

that the appellant was prevented by sufficient cause from preferring the appeal within the prescribed period extend the said period by a further period of 60 days. The intention of the Rule is very much clear. The Tribunal is empowered to exercise its discretion to satisfy itself whether there is sufficient reasons for the Appellant which prevented filing of the appeal within the 60 days as prescribed in sub rule (2) of Rule 7, but this empowerment of Tribunal is strictly to be exercised within the further 60 days only. It means the Tribunal has no power to exercise it's discretion as aforesaid beyond 120 days from the date of issuance of the impugned order.

22. The word "Issue" in the context of the provisions in Rule 7(2) proviso is an transitive word which literally means , "to put forth or distribute usually officially to send out for sale, circulation or publication." In Rule 7(2), the opening sentence which uses the words, "Any person aggrieved by a notification issued by the Central Government or an order passed by the

Central Government or any other authority under the Act, may within 60 days from the date of issue of the notification/ order prefer an appeal to the tribunal envisages the “issue of order” to the aggrieved party. Above sentence carved out from the Rule 7(2) does not simply use the words, “date of order” and therefore, express the legislative intention. The words ‘date of issue of order’ implies sending out the order for communication to the concerned parties. The opening words of the provision of Rule 7(2), “Any person aggrieved byan order” is correlated with the words ending with “may prefer an appeal to the Tribunal” is to be legally construed that the party communicated with the order if aggrieved, may avail the remedy of filing appeal against the order.

23. In the present case, the facts of appearance and participation in the enquiry and getting adjournment for production of all the requisite record and providing the records in piecemeal in the enquiry throughout a period of 3 years showing the initiation of enquiry under Section 7A

is not rebutted, rather admitted. Order cannot be said to have been passed ex parte. The Appellant had been in the knowledge of the proceedings running before the authorized officer of the Respondent.

24. The impugned order having its date of issuance 22.03.2019 is personally received on 29.08.2019 by the Appellant's representative which amounts to personal service mode of the communication to the Appellant, and thus, the Appellant came into the knowledge of the order. If the Appellant felt aggrieved from the order, he had right to prefer appeal against the order under Section 7 I of "the Act" in accordance with the provisions of Rule 7(2) of the Tribunal (Procedure) Rules, 1997 within 60 days from the date of issuance/ communication of the order. If he could not prefer the appeal for any reason which prevented him to do so, the same must be brought before the Tribunal with proper explanation. The Tribunal may consider such reasons of delay only to the extent of further 60 days after the initial

period of limitation period of 60 day from the date of issue of the order. Briefly stating, in the circumstances of present matter where the order dated 22.03.2019 became duly issued/communicated on 29.08.2019; the Tribunal is not empowered to consider the delay beyond 120 days from the above dates.

25. The present matter is not based on **“lack of knowledge of the order”** as on 29.08.2019, the Appellant is found communicated/ served personally with the order; and therefore, the benefit of re-communication of the order could not be invoked by the Appellant so as to extend the limitation period prescribed in the Special Act in exclusion of the general provisions of the Indian Limitation Act, 1963 merely asking copy of the order though earlier communicated, can not provide a fresh period of limitation.

Order

The application for condonation of delay in filing the Appeal under Section 7 I of “the Act” being baseless and having no force of legal and logical

reasons, therefore, liable to be rejected. The appeal bearing No. D-1/03/2023 is also not admissible as barred by limitation period.

The application for condonation of delay is rejected.

Justice Vikas Kunvar Srivastav (Retd.)

Presiding Officer,

CGIT-cum-Labour Court No.1, Delhi.

rds

CGIT 1 DELHI